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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. ADRIAN JOSEPH ALVARADO, Defendant.	Case No. 4:22-cr-00103-DN-PK STIPULATED MOTION TO CONTINUE EVIDENTIARY HEARING ON MOTION TO SUPPRESS District Judge David Nuffer
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The United States respectfully moves this court for an order continuing the date for Evidentiary Hearing on Motion to Suppress, currently set for August 8, 2023. Counsel for the defendant, Frank A. Berardi, has been contacted and stipulates to this Motion to Continue Evidentiary Hearing. Furthermore, the jury trial currently set for September 12, 2023, should be vacated or continued during the pendency of the Motion to Suppress in accordance with 18 U.S.C § 3161.

BACKGROUND

Mr. Alvarado was charged in a three-count Indictment on September 28, 2022¹, and first appeared for an Initial Appearance before Magistrate Judge Kohler on October 3, 2022.² An arraignment was scheduled for October 11, 2022, at which time Mr. Alvarado entered a plea of not guilty, the court appointed Assistant Federal Public Defender Robb Hunt, and a two-day Jury Trial was set for December 20, 2022.³

Mr. Alvarado filed a Motion to Continue Jury Trial on December 7, 2022, which the court granted, and the jury trial was continued to March 17, 2023.⁴ Mr. Berardi filed a Notice of Attorney Appearance on January 25, 2023,⁵ and Mr. Hunt withdrew as counsel the same day. Mr. Alvarado filed a second Motion to Continue Jury Trial on February 28, 2023, which the court granted, and the jury trial was continued to May 30, 2023.⁶ The jury trial was again continued by the court on May 23, 2023, to the currently set jury trial date of September 12, 2023.⁷

Mr. Alvarado filed a Motion to Suppress and Notification of Oral Testimony on July 26, 2023.⁸ An Evidentiary Hearing on that Motion was set by the court for August 8, 2023.⁹

DISCUSSION

The Evidentiary Hearing date of August 8, 2023, was set by the court on July 26, 2023, with less than two week notice to subpoena witnesses. The United States has several conflicts with the current date, and those conflicts were discussed with Mr. Berardi promptly after the date was set.

¹ Docket No. 1, filed September 28, 2022.

² Minute Entry, Docket No. 10, filed October 3, 2022.

³ Minute Entry, Docket No. 13, filed October 11, 2022.

⁴ Docket No. 24, filed December 8, 2022.

⁵ Docket No. 25, filed January 25, 2023.

⁶ Docket No. 34, filed March 1, 2023.

⁷ Docket No. 36, filed May 23, 2023.

⁸ Docket No. 37, filed July 26, 2023.

⁹ Minute Entry, Docket No. 38, filed July 26, 2023.

The United States has learned that the lead case agent and witness, Department of Homeland Security (HSI) Task Force Officer (TFO) Nick Hirschi¹⁰, is unavailable for an Evidentiary Hearing on August 8, 2023, as he will be out of town. Further, counsel for the United States has only limited availability on that date with insufficient time to conduct a lengthy Evidentiary Hearing with four witnesses identified by Mr. Alvarado to appear and testify at the hearing. Additionally, a second Assistant United States Attorney, Christopher Burton, has been assigned to the case to assist with the Motion to Suppress and subsequent Jury Trial. Mr. Burton is out-of-state at a pre-approved and funded training assignment the entire week of August 8, 2023.

Counsel for the United States reached out to Mr. Berardi promptly upon learning of the conflicts to advise and discuss possible dates later in August. Mr. Berardi stated that he had no objection to continuing the Evidentiary Hearing. The only date that Mr. Berardi is available in August is August 23, 2023, and the United States is available on that date as well. After Mr. Berardi obtained Mr. Alvarado's consent to a continuance of the hearing, the parties further discussed other possible dates for the Evidentiary Hearing beyond August. The parties are available in mid to late September, either September 21 - 22 or the entire week of September 25 - 29, if available for the court. The parties have stipulated to a continuance of the Evidentiary Hearing for this period of time, based on scheduling conflicts in the interim.

With the necessity of continuing the Evidentiary Hearing, and the briefing that will necessarily follow, the jury trial should be continued or vacated during the pendency, and until final disposition, of the Motion to Suppress. The Speedy Trial Act requires a trial to begin within 70 days of indictment or initial appearance, whichever occurs later.¹¹

¹⁰ HSI TFO Nick Hirschi was mis-identified in Mr. Alvarado's Motion to Suppress as HSI TFO Jed Hirschi. TFO Nick Hirschi is the lead case agent who interviewed Mr. Alvarado.

¹¹ 18 U.S.C. § 3161(c)(1).

Certain periods of time, however, are excluded from this 70-day period for trial to commence.¹² Time for trial to commence is excluded under 18 U.S.C. § 3161(h)(1)(D) for any period of “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion.”¹³

Trial has been continued several times on motion of the defendant, and is currently set for September 12, 2023, within the time limits of the Speedy Trial Act. Mr. Alvarado’s filing of pretrial motions, and specifically the Motion to Suppress and Notification of Oral Testimony filed on July 26, 2023, tolls the time period upon which trial must commence beginning on that date through the conclusion of the hearing on, or other prompt disposition of, such motion.¹⁴

Due to the filing of defendant’s Motion to Suppress and any hearing on that motion to be determined, the United States requests an order vacating the current trial date of September 12, 2023, and a finding that the time from the filing of the Motion to Suppress on July 26, 2023, through the conclusion of the hearing on, or other prompt disposition of that motion, be excluded under the Speedy Trial Act time limits for trial.

CONCLUSION

Based on the foregoing, the United States respectfully requests that the court continue the Evidentiary Hearing currently set for August 8, 2023, to a date on or after September 21, 2023, as stipulated by the parties. Further, the currently set jury trial date

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¹² *See*, 18 U.S.C. § 3161(h).

¹³ 18 U.S.C. § 3161(h)(1)(D).

¹⁴ *Id.*

should be continued or vacated with an order finding excludable time under 18 U.S.C. § 3161(h)(1)(D) starting on July 26, 2023.

DATED this 31st day of July, 2023.

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/s/ Angela M. Reddish-Day

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